

148.851 Definitions for KRS 139.536 and KRS 148.851 to 148.860.

As used in KRS 139.536 and KRS 148.851 to 148.860, unless the context clearly indicates otherwise:

- (1) "Agreement" means a tourism attraction agreement entered into, pursuant to KRS 148.859, on behalf of the authority and an approved company, with respect to a tourism attraction project;
- (2) "Approved company" means any eligible company approved by the secretary of the Commerce Cabinet and the authority pursuant to KRS 148.859 that is seeking to undertake a tourism attraction project;
- (3) "Approved costs" means:
 - (a) Obligations incurred for labor and to vendors, contractors, subcontractors, builders, suppliers, deliverymen, and materialmen in connection with the acquisition, construction, equipping, and installation of a tourism attraction project;
 - (b) The costs of acquiring real property or rights in real property and any costs incidental thereto;
 - (c) The cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of the acquisition, construction, equipping, and installation of a tourism attraction project which is not paid by the vendor, supplier, deliveryman, contractor, or otherwise provided;
 - (d) All costs of architectural and engineering services, including but not limited to: estimates, plans and specifications, preliminary investigations, and supervision of construction and installation, as well as for the performance of all the duties required by or consequent to the acquisition, construction, equipping, and installation of a tourism attraction project;
 - (e) All costs required to be paid under the terms of any contract for the acquisition, construction, equipping, and installation of a tourism attraction project;
 - (f) All costs required for the installation of utilities, including but not limited to: water, sewer, sewer treatment, gas, electricity and communications, and including off-site construction of the facilities paid for by the approved company; and
 - (g) All other costs comparable with those described in this subsection, excluding costs subject to refund under KRS 154.20-202, 154.20-204, 154.20-206, 154.20-208, and 154.20-210;
- (4) "Authority" means the Kentucky Tourism Development Finance Authority as set forth in KRS 148.850;
- (5) "Crafts and products center" means a facility primarily devoted to the display, promotion, and sale of Kentucky products, and at which a minimum of eighty percent (80%) of the sales occurring at the facility are of Kentucky arts, crafts, or agricultural products;

- (6) "Eligible company" means any corporation, limited liability company, partnership, limited partnership, sole proprietorship, business trust, or any other entity operating or intending to operate a tourism attraction project, whether owned or leased, within the Commonwealth that meets the standards promulgated by the secretary of the Commerce Cabinet pursuant to KRS 148.855. An eligible company may operate or intend to operate directly or indirectly through a lessee;
- (7) "Entertainment destination center" means a facility containing a minimum of two hundred thousand (200,000) square feet of building space adjacent or complementary to an existing tourism attraction, an approved tourism attraction project, or a major convention facility, and which provides a variety of entertainment and leisure options that contain at least one (1) major themed restaurant and at least three (3) additional entertainment venues, including but not limited to live entertainment, multiplex theaters, large format theaters, motion simulators, family entertainment centers, concert halls, virtual reality or other interactive games, museums, exhibitions, or other cultural and leisure time activities. Entertainment and food and drink options shall occupy a minimum of sixty percent (60%) of total gross area available for lease, and other retail stores shall occupy no more than forty percent (40%) of the total gross area available for lease;
- (8) "Final approval" means the action taken by the authority authorizing the eligible company to receive inducements under KRS 139.536 and KRS 148.851 to 148.860;
- (9) "Inducements" means the Kentucky sales tax refund as prescribed in KRS 139.536;
- (10) "Preliminary approval" means the action taken by the authority conditioning final approval by the authority upon satisfaction by the eligible company of the requirements of KRS 139.536 and KRS 148.851 to 148.860;
- (11) "State agency" means any state administrative body, agency, department, or division as defined in KRS 42.005, or any board, commission, institution, or division exercising any function of the state that is not an independent municipal corporation or political subdivision;
- (12) "Theme restaurant destination attraction" means a restaurant facility that:
 - (a) Has construction, equipment, and furnishing costs in excess of five million dollars (\$5,000,000);
 - (b) Has an annual average of not less than fifty percent (50%) of guests who are not residents of the Commonwealth;
 - (c) Is in operation and open to the public no less than three hundred (300) days per year and for no less than eight (8) hours per day;
 - (d) Has food and nonalcoholic drink options that constitute a minimum of fifty percent (50%) of total gross sales receipts; and
 - (e) 1. Has seating capacity of four hundred fifty (450) guests and offers live music or live musical and theatrical entertainment during the peak business hours that the facility is in operation and open to the public;

2. Within three (3) years of the completion date pursuant to KRS 148.859(1)(b), holds a top two (2) tier rating by a nationally accredited service; or
 3. Offers a unique dining experience that is not available in the Commonwealth within a one hundred (100) mile radius of the attraction;
- (13) "Tourism attraction" means a cultural or historical site, a recreation or entertainment facility, an area of natural phenomenon or scenic beauty, a Kentucky crafts and products center, a theme restaurant destination attraction, or an entertainment destination center.
- (a) A tourism attraction may include lodging facilities if:
1. The facilities constitute a portion of a tourism attraction project and represent less than fifty percent (50%) of the total approved cost of the tourism attraction project, or the facilities are to be located on recreational property owned or leased by the Commonwealth or federal government and the facilities have received prior approval from the appropriate state or federal agency;
 2. The facilities involve the restoration or rehabilitation of a structure that is listed individually in the National Register of Historic Places or are located in a National Register Historic District and certified by the Kentucky Heritage Council as contributing to the historic significance of the district, and the rehabilitation or restoration project has been approved in advance by the Kentucky Heritage Council;
 3. The facilities involve the reconstruction, restoration, rehabilitation, or upgrade of a full-service lodging facility having not less than five hundred (500) guest rooms, with reconstruction, restoration, rehabilitation, or upgrade costs exceeding ten million dollars (\$10,000,000);
 4. The facilities involve the construction, restoration, rehabilitation, or upgrade of a full-service lodging facility which is or will be an integral part of a major convention or sports facility, with construction, restoration, rehabilitation, or upgrade costs exceeding six million dollars (\$6,000,000); or
 5. The facilities involve the construction, restoration, rehabilitation, or upgrade of a lodging facility which is or will be located:
 - a. In the Commonwealth within a fifty (50) mile radius of a property listed on the National Register of Historic Places with a current function of recreation and culture; and
 - b. Within any of the one hundred (100) least populated counties in the Commonwealth, in terms of population density, according to the most recent census;
- (b) A tourism attraction shall not include the following:
1. Facilities that are primarily devoted to the retail sale of goods, other than an entertainment destination center, a theme restaurant destination

attraction, a Kentucky crafts and products center, or a tourism attraction where the sale of goods is a secondary and subordinate component of the attraction; and

2. Recreational facilities that do not serve as a likely destination where individuals who are not residents of the Commonwealth would remain overnight in commercial lodging at or near the tourism attraction project; and

- (14) "Tourism attraction project" or "project" means the acquisition, including the acquisition of real estate by a leasehold interest with a minimum term of ten (10) years, construction, and equipping of a tourism attraction; the construction, and installation of improvements to facilities necessary or desirable for the acquisition, construction, and installation of a tourism attraction, including but not limited to surveys; installation of utilities, which may include water, sewer, sewage treatment, gas, electricity, communications, and similar facilities; and off-site construction of utility extensions to the boundaries of the real estate on which the facilities are located, all of which are to be used to improve the economic situation of the approved company in a manner that shall allow the approved company to attract persons.

Effective: July 12, 2006

History: Amended 2006 Ky. Acts ch. 149, sec. 206, effective July 12, 2006. -- Amended 2005 Ky. Acts ch. 95, sec. 24, effective June 20, 2005; ch. 184, sec. 15, effective June 20, 2005; and ch. 168, sec. 46, effective March 18, 2005. -- Amended 2004 Ky. Acts ch. 105, sec. 23, effective July 13, 2004. -- Amended 2003 Ky. Acts ch. 73, sec. 3, effective March 18, 2003. -- Amended 2002 Ky. Acts ch. 338, sec. 43, effective April 11, 2002. -- Repealed, reenacted, and amended 2001 Ky. Acts ch. 1, sec. 2, effective June 21, 2001. -- Amended 2000 Ky. Acts ch. 1, sec. 1, effective February 7, 2000. -- Amended 1998 Ky. Acts ch. 48, sec. 11, effective July 15, 1998; and ch. 238, sec. 1, effective April 1, 1998. -- Created 1996 Ky. Acts ch. 335, sec. 1, effective July 15, 1996.

Formerly codified as KRS 154.29-010.

Legislative Research Commission Note (3/18/2005). This section was amended by 2005 Ky. Acts chs. 95, 168 and 184, which do not appear to be in conflict and have been codified together.

Legislative Research Commission Note (3/18/2005). 2005 Ky. Acts. ch. 168, sec. 165, provides that the amendments to KRS 148.851 in 2005 Ky. Acts ch. 168, sec. 46, "relating to income tax changes and incentives, shall apply to tax years beginning on or after January 1, 2005."

Legislative Research Commission Note (6/21/2001). This is former KRS 154.29-010 as amended by 2001 Ky. Acts ch. 1, sec. 2, and renumbered by the Reviser of Statutes under KRS 7.136(1).